

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE MARTINEZ,

Petitioner,

vs.

BEN CURRY,

Respondent.

No. C 07-1813 MMC (PR)

ORDER TO SHOW CAUSE

On March 30, 2007, petitioner, a California prisoner incarcerated at the Correctional Training Facility, Soledad, and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

BACKGROUND

In 1988, petitioner was convicted, in Imperial County Superior Court, of kidnap for robbery, and sentenced him to a term of seven years to life in state prison. In 2005, the California Board of Prison Hearings ("BPH") denied petitioner parole. Petitioner challenged the decision in the Imperial County Superior Court, the California Court of Appeal and the Supreme Court of California. All three habeas petitions were denied.

DISCUSSION

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it

1 appears from the application that the applicant or person detained is not entitled thereto."
2 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
3 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
4 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
5 431 U.S. 63, 75-76 (1977)).

6 Petitioners claims: (1) the decision to deny him parole violated his right to due process
7 because it was not based on "some evidence"; and (2) the decision to deny him parole
8 violated his right to due process because it was not based on reliable evidence that petitioner
9 poses a risk to the community, but rather was based on unchanging facts regarding his
10 commitment offense and criminal history. Liberally construed, petitioner's claims are
11 cognizable.

12 CONCLUSION

13 For the reasons stated above, the Court orders as follows:

14 1. The Clerk of the Court shall serve by certified mail a copy of this order and the
15 petition, along with all attachments thereto, upon respondent and respondent's attorney, the
16 Attorney General for the State of California. The Clerk shall also serve a copy of this order
17 on petitioner.

18 2. Respondent shall file with the Court and serve on petitioner, within 90 days of
19 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
20 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
21 granted based on petitioner's cognizable claims. Respondent shall file with the answer and
22 serve on petitioner a copy of all portions of the state trial record that have been transcribed
23 previously and that are relevant to a determination of the issues presented by the petition.

24 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
25 the Court and serving it on respondent within 30 days of the date the answer is filed.

26 3. In lieu of an answer, respondent may file, within 90 days of the date this order
27 is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee
28 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a

1 motion, petitioner shall file with the Court and serve on respondent an opposition or
2 statement of non-opposition within 30 days of the date the motion is filed, and respondent
3 shall file with the Court and serve on petitioner a reply within 15 days of the date any
4 opposition is filed.


5 4. Petitioner is reminded that all communications with the Court must be served
6 on respondent by mailing a true copy of the document to respondent's counsel.

7 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
8 Court and respondent informed of any change of address and must comply with the Court's
9 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
10 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

11 6. Upon a showing of good cause, requests for a reasonable extension of time will
12 be granted as long as they are filed on or before the deadline they seek to extend.

13 IT IS SO ORDERED.

14 DATED: June 8, 2007


MAXINE M. CHESNEY
United States District Judge